

APPENDIX R

***AGREEMENT REGARDING SALES TAX BETWEEN THE
MENOMINEE INDIAN TRIBE OF WISCONSIN, THE MENOMINEE
KENOSHA GAMING AUTHORITY AND COUNTY OF KENOSHA***

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BETWEEN THE MENOMINEE INDIAN TRIBE OF WISCONSIN, THE MENOMINEE
KENOSHA
GAMING AUTHORITY AND THE
COUNTY OF KENOSHA**

This Agreement is entered into by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN, a federally recognized Indian tribe (the "Tribe"), the MENOMINEE KENOSHA GAMING AUTHORITY, (hereinafter the "Authority") a gaming entity formed by the Tribe and the COUNTY OF KENOSHA (hereinafter the "County") (collectively, the "Parties" or a "Party").

WITNESSETH:

WHEREAS, the Tribe and the Authority seek to develop a destination gaming facility and related development on lands to be held in trust by the United States (the "Facility") in Kenosha, Wisconsin; and

WHEREAS, the Tribe or Authority will enact a sales tax ordinance applicable to certain sales transactions executed on the Tribe's trust lands in Kenosha, Wisconsin; and

WHEREAS, the intent of a Tribal sales tax is to generate revenue for Tribal government; and

WHEREAS, the Tribe or Authority will collect its sales tax from patrons traveling to the Tribe's trust lands; and

WHEREAS, Kenosha County is responsible for the building and maintenance of a large portion of the road system within Kenosha County; and

WHEREAS, it is in the interest of the Tribe and Authority that the roads of Kenosha County are maintained at a high standard; and

WHEREAS, the Tribe, the Authority and the County desire to enter into an Agreement under which the Authority will provide funds to the County to be used for road and road infrastructure building and maintenance;

NOW, THEREFORE, in exchange for the mutual covenants and promises set forth below, the Parties hereby agree as follows:

I. ENACTMENT OF SALES TAX

The Tribe or Authority shall enact and maintain a Tribal sales tax at a rate equal to the State of Wisconsin sales tax and any applicable County sales tax. This tax shall apply to sales made by the Authority on the trust land that are not subject to the State of Wisconsin's sales or use tax. The Tribal sales tax shall tax sales in a substantially similar manner as the State of Wisconsin Sales tax. The tax shall be effective on the date the trust lands are accepted into trust by the United States.

II. PAYMENT TO THE COUNTY AND AUDIT

The Tribe or Authority shall pay to the County 30% of the tax collected by the Tribe or Authority pursuant to the sales tax ordinance referenced in Section I, above for twenty (20) years beginning on the date the first payment is made. After twenty (20) years the Tribe or Authority shall pay to the County 20% of such tax collected. Such payments shall be made in accordance with the payment schedule in Appendix A to this Agreement. Any good or service provided to customers of the Authority without charge shall not be subject to the Tribal sales tax ordinance.

The Authority will provide an audit and sales tax report to the County annually as part of the audit provided to the County under the terms and conditions provided for in the Intergovernmental Agreement between the City and County of Kenosha and the Menominee Indian Tribe of Wisconsin and the Menominee Kenosha Gaming Authority. In the event that sufficient information is not provided in such audit so as to accurately reflect sales tax revenues, the Authority shall allow the County to have an audit performed at the Tribe's expense.

If the audit shows that the payments to the County under this Agreement were less than the payments that should have been paid to the County pursuant to the terms of this Agreement, the Tribe or the Authority shall, within 60 days after receipt of the audit, make a separate payment to the County of the difference between such amounts. If the audit shows that the payments to the County were more than the payments that should have been paid to the County pursuant to the terms of this Agreement, the County shall, within 60 days after receipt of the audit, make a payment to the Tribe or Authority of the difference between such amounts.

III. COUNTY USE OF FUNDS

All funds paid to the County by the Authority pursuant to Section II, above, shall be used by the County for general highway purposes, including but not limited to, road or road infrastructure construction or maintenance on roads falling within the jurisdiction of the County, equipment, labor, materials, capital improvement funds, highway related debt service or sinking funds for highway purposes.

The County shall, within ninety (90) days of the land at Dairyland Greyhound Park going into Trust, and annually thereafter, prepare and maintain a list of road projects and highway purposes that will benefit both the Menominee Tribal Trust lands and the citizens of Kenosha County. The County shall consult with the Tribe in creating said list. The Tribe shall select one or more projects or purposes from the list presented, and if more than one project or purpose is chosen, shall prioritize the projects or purposes chosen. Should the Tribe fail to make a selection within 60 days of the above list being presented to the Tribe, the County may select a purpose or project from the list presented for that year. Funds collected by the County pursuant to this Agreement shall be used only for the projects or purposes listed in this section.

County shall maintain funds received under this Agreement in a separate ledger and shall provide a report to the Tribe annually based on the County's audit showing how such funds were or will be used.

IV. TERM

The term of this Agreement shall continue for so long as the Tribe or the Authority makes sales on the Trust land subject to the Tribal sales tax ordinance.

V. DEFAULT

- A. In the event that any of the Parties to this Agreement believe that any other Party is not fulfilling any of that Party's obligations under this Agreement, the Party alleging a default shall serve notice upon the defaulting Party. The Party against whom a default is asserted shall have 30 days from receipt of such notice to cure any alleged default of its obligation. If the Party against whom a default is asserted fails to cure its default during this period, the Parties shall meet to informally mediate the dispute within 30 days after the Party requesting such a meeting serves notice on the other Party.
- B. If after such meeting the dispute is not resolved, the dispute may be litigated in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court, or if such federal courts will not hear disputes related to this Agreement, in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court.

VI. LIMITED WAIVER OF TRIBAL IMMUNITY

The Tribe and Authority agree to waive any sovereign immunity enjoyed by the Tribe or Authority to enforce any dispute or claim arising under this Agreement. The Tribe, Authority and County consent to be sued in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court in connection with such disputes or claims. If such federal courts will not hear a dispute or claim arising under this Agreement, the Authority and County consent to be sued in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court in connection with such disputes or claims. No Party to this Agreement shall contest jurisdiction or venue of the above-referenced courts. The Authority shall not invoke the doctrine of exhaustion of tribal or other administrative remedies to defeat or delay such jurisdiction or proceeding.

Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, in any suit against the Tribe or the Authority for monetary damages, the parties to this Agreement agree that such damages shall be limited to the undistributed or future net revenues or other assets of the Authority and/or other tribal gaming businesses established for the purposes of owning and operating the Facility.

VII. TERMINATION

This Agreement may be terminated upon the mutual agreement of the Parties, or pursuant to Section I of this Agreement.

VIII. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and duly authorized assigns of each Party pursuant to the terms of this Agreement.

IX. NON-ASSIGNABILITY

None of the Parties may assign this Agreement without the express written consent of each of the other Parties.

X. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Parties and supersedes all prior agreements or understandings between the Parties, whether written or oral.

XI. NO THIRD-PARTY BENEFICIARY

This Agreement is personal to the parties to this Agreement and is not intended for the benefit of any other party.

XII. AMENDMENT

This Agreement may only be amended upon the written agreement of the Parties.

XIII. GOOD FAITH

The parties to this Agreement agree that this Agreement imposes upon them a duty of good faith and fair dealing and further agree not to act or fail to act in such a manner as to directly or indirectly impair the obligations set forth herein.

XIV. INTEREST ON LATE PAYMENTS

Interest on any late payment due under this Agreement shall accrue at the rate of one and one-half (1.5 %) percent per month on the unpaid balance due until paid in full. Any partial payments of the unpaid balance due shall first be applied to accrued interest with the remainder, if any, next applied to the unpaid balance.

XV. DISPUTE RESOLUTION

Claims, disputes or other matters arising out of or related to this Agreement, or the breach thereof, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by any party to this Agreement. Prior to filing a written demand for mediation, the party making such demand shall submit to the other affected parties a statement of the claim, dispute or other matter in question. The parties shall meet promptly after such statement is filed and shall endeavor in good faith to resolve any such claim, dispute or other matter in question amicably. If such meeting does not resolve the claim, dispute or other matter in question, a demand for mediation shall be filed in writing with the other affected parties and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Any mediation conducted pursuant to this Section XV shall be held in accordance with the rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. If the mediation fails to resolve the claim, dispute or other matter in question, arbitration shall not be available, and shall not be considered a condition precedent to the commencement of legal or equitable proceedings based upon such claim, dispute or other matter in question. If a demand for mediation has been made under this Section XV of this Agreement but such

mediation has either not occurred or has not resolved the claim(s) subject to such mediation before the applicable statute of limitations for such claim(s) has run, a party to this Agreement may avail itself of any legal or equitable remedy available to the party without concluding the mediation. In the event that mediation does not resolve a claim, dispute or other matter in question, this Agreement is intended to provide each party with a right and standing to challenge any act or omission which violates this Agreement in the United States District Court for the Eastern District of Wisconsin and all related federal appellate courts or, if such United States District Court cannot hear or refuses to hear such dispute, State Circuit Court in and for Kenosha County and all related State appellate courts. This Agreement is further intended to provide each party with a right and standing to seek any available legal or equitable remedy to enforce this Agreement and to seek damages for the breach of this Agreement in such enumerated courts. Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, in any suit against the Tribe or the Authority for monetary damages, the parties agree that such damages shall be limited to the undistributed or future Net Revenues or other assets of the Authority and/or other tribal gaming business established for the purposes of owning and operating the Kenosha Facility.

XVI. PREVAILING PARTY TO RECEIVE COSTS AND FEES

In the event of litigation arising under this Agreement, the prevailing party in any such litigation shall be entitled to an award and judgment for its reasonable attorney's fees and any statutory costs.

XVII. GOVERNING LAW

This Agreement shall be governed by the laws of the United States of America and of the State of Wisconsin.

XVIII. AUTHORIZATION

The Tribe, the Authority, and the County each represent and warrant that each has performed all acts precedent to adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such party is duly and fully authorized to so execute and deliver this Agreement.

XIX. NOTICES

All notices required to be given hereunder shall be given in writing, sent by either personal delivery, certified mail, return receipt requested, or overnight mail. If sent via personal delivery, the notice shall be effective on the date of delivery. If

sent by certified mail, the notice shall be deemed effective five (5) days after such mailing, not counting the day such notice was sent. If sent by overnight mail, the notice shall be effective on the date of delivery. All notices shall be addressed as follows:

To the County:	County Clerk County of Kenosha 912 56th Street Kenosha, WI 53140
To the Tribe:	Tribal Chairman Menominee Indian Tribe of Wisconsin Loop Road Keshena, WI 54135
To the Authority:	Menominee Kenosha Gaming Authority Menominee Tribe of Indians Loop Road Keshena, WI 54135

XX. NO CHALLENGES TO THE AGREEMENT

The Tribe, the Authority and the County hereby waive any right each may have to commence or maintain any civil action or other proceeding to contest, invalidate or challenge this Agreement, any procedure or proceeding undertaken to adopt this Agreement or any of the actions required or contemplated by this Agreement, or to take any actions, either directly or indirectly, to oppose or in any other way, to initiate, promote or support the opposition of approvals required under this Agreement or to hinder, obstruct or unduly delay any of the actions required or contemplated by this Agreement. This paragraph shall not be construed to prevent a party to this Agreement from commencing a declaratory judgment action regarding the interpretation of this Agreement. In the event of a challenge to the validity of this Agreement by any third party, the Tribe, the Authority and the County shall each defend the validity and enforceability of this Agreement in any administrative or judicial proceeding.

XXI. SEVERABILITY

Except for this Section, Section IV, Section VI, Section XIII, Section XV, Section XX, and Section XXV, no provision of this Agreement is severable from this Agreement. In the event that any provision of this Agreement is adjudged by any court of competent jurisdiction or federal agency having jurisdiction over this Agreement or Indian gaming to be invalid, ineffective or unenforceable, in whole or in part, the parties shall promptly meet to discuss how they might satisfy the terms of this Agreement by alternative means. The parties shall use their best efforts to

find, design and implement a means of successfully effectuating the terms of this Agreement. If necessary, parties shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits, and burdens of this Agreement. In the event the parties are not able to reach agreement in such situation, the dispute resolution procedure of Section XV of this Agreement shall apply.

XXII. NO LIABILITY FOR ACTS PRIOR TO THE AGREEMENT

Except as subject to a specific, written agreement, no party shall incur any liability for any acts undertaken during the discussion, negotiation, execution or the processes undertaken to secure any approval required to effectuate this Agreement, whether or not all necessary approvals to make this Agreement effective are obtained.

XXIII. CAPTIONS

The captions contained in this Agreement are inserted only as matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

XXIV. AGREEMENT IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which fully executed counterparts shall be deemed an original.

XXV. TRIBE TO GUARANTEE AUTHORITY'S PERFORMANCE

The Tribe agrees that it will guarantee the performance of any duty or obligation of the Authority under this Agreement, and either perform such duty or obligation or cause its performance by the Authority, within ten (10) days of its receipt of notice from the County of the Authority's failure to perform any such duties or obligations.

XXVI. EFFECTIVE DATE

This Agreement shall be effective upon its execution by all of the Parties of this Agreement and upon execution of all the Parties of the intergovernmental agreement between these parties and the City of Kenosha.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands.

COUNTY OF KENOSHA, WISCONSIN

BY: _____
Allan K. Kehl, County Executive

Date: _____

BY: _____
Edna R. Highland, County Clerk

Date: _____

**MENOMINEE INDIAN TRIBE OF
WISCONSIN**

By: _____
Chairperson

Date: _____

**MENOMINEE KENOSHA GAMING
AUTHORITY**

By: _____
Chairperson

Date: _____

APPENDIX A

Collection Month of Sales Tax	Payment Date
January	Last calendar day of February
February	Last calendar day of March
March	Last calendar day of April
April	Last calendar day of May
May	Last calendar day of June
June	Last calendar day of July
July	Last calendar day of August
August	Last calendar day of September
September	Last calendar day of October
October	Last calendar day of November
November	Last calendar day of December
December	Last calendar day of January